

Idaho Family Law- Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP– March 31, 2021

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Adoption Proceeding – Jurisdiction

Idaho Ann. Code § 16-1506 – Proceedings on Adoption

(1) Proceedings to adopt a child shall be commenced by the filing of a petition together with a copy thereof. The petition shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the county in which said person or persons reside. If the adoption arises from a child protective act case, the petition shall be filed in the court having jurisdiction over the child protective act case unless that court relinquishes jurisdiction over the adoption proceeding. The petitioner shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition shall set forth the name and address of the petitioner or petitioners, the name of the child proposed to be adopted and the name by which the person to be adopted shall be known if and when adopted, the degree of relationship of the child, if any, to the petitioner or petitioners and the names of any person or agency whose consent to said adoption is necessary. At the time fixed for hearing such petition, the person adopting a child and the child adopted, and the spouse of the petitioner if a natural parent of the child, must appear before the court of the county wherein the petition was filed. The petitioner shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

Idaho Ann. Code § 16-1514A – International Adoption

(1) When an Idaho resident adopts a child in a foreign country in accordance with the laws of the foreign country, and such adoption is recognized as full and final by the United States government, such resident may file with a petition a copy of the decree, order or certificate of adoption which evidences finalization of the adoption in the foreign country, together with a certified translation thereof if it is not in English, and proof of full and final adoption from the United States government with the clerk of the court of any county in this state having jurisdiction over the person or persons filing such documents.

Adoption Proceeding – Service/Notification Requirements

Idaho Ann. Code § 16-2005 – Conditions Under Which a Termination May Be Granted

(4) The court may grant an order terminating the relationship where a consent to termination in the manner and form prescribed by this chapter has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child, or where the consent to termination has been filed by a licensed adoption agency, no subsequent hearing on the merits of the petition shall be held. Consents required by this chapter must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE.... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND

FOR THE COUNTY OF.... In the Matter of the termination)
of the parental rights of)

I (we), the undersigned, being the.... of...., do hereby give my (our) full and free consent to the complete and absolute termination of my (our) parental right(s), to the said...., who was born....., unto...., hereby relinquishing completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said...., and I (we) do hereby expressly waive my (our) right(s) to hearing on the petition to terminate my (our) parental relationship with the said...., and respectfully request the petition be granted.

STATE OF IDAHO)

) ss.

COUNTY OF....)

On this.... day of...., 20.., before me, the undersigned..... (Judge or Magistrate) of the District Court of the.... Judicial District of the state of Idaho, in and for the county of...., personally appeared...., known to me (or proved to me on the oath of....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in

this certificate first above written.

Idaho Ann. Code § 16-1505 –Notice of Adoption Proceedings (1) Notice of an adoption proceeding shall be served on each of the following persons:

(a) Any person or agency whose consent or relinquishment is required under section 16-1504, Idaho Code, unless that right has been terminated by waiver, relinquishment, consent or judicial action, or the person's parental rights have been previously terminated;

(b) Any person who has registered notice of the commencement of paternity proceedings pursuant to section 16-1513, Idaho Code;

(c) The petitioner's spouse, if any, only if he or she has not joined in the petition;

(d) Any person who is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother, unless such right to notice or parental rights have

been previously terminated;

(e) Any person who is openly living in the same household with the child at the time the mother's consent is executed or relinquishment made, and who is holding himself out

to be the child's father, unless such rights to notice or parental rights have been previously terminated; and

(f) Any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.

(2) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman, is deemed to be on notice that a pregnancy and an adoption proceeding regarding that child may occur, and that he has a duty to protect his own rights and interests. He is therefore entitled to actual notice of a birth or an adoption proceeding with regard to that child only as provided in this section.

(3) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(4) The notice required by this section may be served

immediately after commencement of proceedings to adopt a child but shall be served at least twenty-one

(21) days prior to the final dispositional hearing. The notice shall specifically state that the person served must respond to the petition for adoption within twenty-one (21) days of service if he intends to intervene in or contest the adoption.

(5)(a) Any person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a written objection to the adoption in the adoption proceeding within twenty-one (21) days after service. The written objection shall set forth specific relief sought and be accompanied by a memorandum specifying the factual and legal grounds upon which the written objection is based. (b) Any person who fails to file a written objection to the adoption within twenty-one (21) days after service of notice waives any right to further notice in connection with the adoption, forfeits all rights in relation to the adoptee, and is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(6) Service of notice under this section shall be made as follows:

(a) With regard to a person whose consent is necessary

under section 16-1504, Idaho Code, notice shall be given by personal service. Where reasonable efforts to effect personal service have been unsuccessful, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than twenty-one (21) days after service of notice or, where service is by registered or certified mail and publication, the hearing shall take place no sooner than twenty-one (21) days after the date of last publication. Notice and appearance may be waived by any person in writing before the court or in the presence of, and witnessed by, a clerk of court or a representative of an authorized agency, provided that such parent has been apprised by the court or by such person of the meaning and consequences of the adoption proceeding. Where the person entitled to notice resides outside the state, the waiver shall be acknowledged before a notary of the state and shall contain the current address of said person. The person who has executed such a waiver shall not be required to appear. If service is by publication, the court shall designate the content of the notice regarding the identity of the parties. The notice may not include the name of the person or persons seeking to adopt the adoptee.

(b) As to any other person for whom notice is required under

this section, service by certified mail, return receipt requested, is sufficient. If that service cannot be completed after two (2) attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has registered a notice of his commencement of paternity proceedings with the vital statistics unit of the department of health and welfare in accordance with the requirements of section 16-1513, Idaho Code, shall be served by certified mail, return receipt requested, at the last address filed with the department.

(7) Proof of service of notice on all persons for whom notice is

required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(8) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(9) Except as to those persons whose consent to an adoption is required under section 16-1504, Idaho Code, the sole purpose of notice under this section is to enable the person served to present evidence to the court relevant to the best interest of the child.

Domestic Violence– Service/Notification Requirements

ID Code § 39-6308 – Ex Parte Temporary Protection Order

(5) An ex parte temporary protection order shall be effective for a fixed period not to exceed fourteen (14) days, but may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be served with a copy

of the ex parte order along with a copy of the petition and notice of the date set for the hearing. If the ex parte temporary protection order substantially affects the respondent's rights to enter the domicile or the respondent's right to custody or visitation of the respondent's children and the ends of justice so require, the respondent may move the court for an order shortening the time period within which the hearing required under the provisions of section 39-6306, Idaho Code, must be held. Motions seeking an order shortening the time period must be served upon the petitioner at least two (2) days prior to the hearing on the motion.

ID Code § 39-6310 – Order and Service

- (1) An order issued under this chapter along with a copy of the petition for a protection order, if the respondent has not previously received the petition, shall be personally served upon the respondent, except as provided in subsections (6), (7) and (8) of this section.
- (2) A peace officer of the jurisdiction in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party at the petitioner's own expense.
- (3) If service by a peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter and a copy of the petition for a protection order, if the respondent has not previously received the petition, forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.
- (4) If the peace officer cannot complete service upon the respondent within ten (10) days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.
- (5) Returns of service under this chapter shall be made in accordance with the applicable court rules.
- (6) If an order entered by the court recites that the respondent appeared in person before the court and receives a copy of the order, the necessity for further service is waived and proof of service of that order is not necessary.
- (7) If a party has appeared in person before the court and has waived personal service, the clerk of the court shall complete service of any notice of hearing or orders or modifications by certified mail to the party's address as shown on the court petition which resulted in the issuance of the order or modification. Parties shall at all times keep the court informed of their current mailing address.
- (8) If a foreign protection order is registered with the court under section 39-6306a, Idaho Code, the necessity for further service is waived and proof of service of that order is not necessary.

Domestic Violence – Jurisdiction

ID Code § 39-6304 – Action for Protection

- (1) There shall exist an action known as a "petition for a protection order" in cases of domestic violence.
- (2) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the magistrates division of the district court, alleging that the person or a family or household member, whether an adult or a child, is the victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter. A custodial or noncustodial parent or guardian may file a petition on behalf of a minor child who is the victim of domestic violence.
- (3) A person's right to petition for relief under this chapter shall not be affected by that person's having left the residence or household to avoid abuse.

- (4) The petition shall disclose the existence of any custody or any marital annulment, dissolution or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection or adoption proceedings affecting the children of any party.
- (5) When the petitioner requests custody of any child, the petition shall disclose:
 - (a) The county and state where the child has resided for six (6) months immediately prior to the filing of the petition;
 - (b) The party or other responsible person with whom the child is presently residing; and
 - (c) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.
- (6) A petition shall be filed in the county of the respondent's residence, the petitioner's residence, or where the petitioner is temporarily residing.